

Appeal of Wendell Jenkins, Sr.

The sole issue presented by this appeal is 'whether **apellant's** claim for refund is barred by the statute of limitations set forth in section 19053 of the Revenue **and** Taxation Code.

On or about November 30, 1975, respondent notified appellant that it had *no* record of his having filed a personal income tax return for the **year** 1974 and requested that he submit the required return. When appellant failed to respond to this communication, respondent issued him a notice of proposed assessment of additional personal income tax based upon his unreported 1974 income; the notice became final on April 3, 1976. In September 1976, appellant's account was assigned to respondent's collection bureau for resolution. Finally, in August 1977, appellant paid the proposed assessment in full.

On May 29, 1979; appellant submitted his 1974 personal income tax return to respondent. On his return, appellant claimed that the amount of California income tax withheld from his wages exceeded his total tax liability by \$503.00 and requested a refund in that amount. On October 30, 1979, respondent issued a notice of action notifying appellant that his claim **for** refund for 1974 had not been filed within the period prescribed by section 19053 of the Revenue and Taxation Code and that, consequently, it **was** barred by the statute of limitations. Appellant's protest **of** respondent's determination has resulted in -this appeal.

In pertinent part, section 19053 provides as follows:

No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period **a claim therefor** is filed by the taxpayer, . . .

Respondent contends that the above quoted language of section 19053 is mandatory and that under its clear terms the latest date on which appellant could have timely filed his claim for refund was April 15, 1979, i.e., four years from the last day prescribed for the filing of his 1974 return. Appellant, while acknowledging that his claim for refund was not filed within the

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period set forth in section 19053, argues that respondent's denial of his claim is unjust under the circumstances because his tax preparer failed to provide him with the records necessary to file a timely claim for refund.

In numerous prior appeals we have had occasion to deal with the issue presented by this appeal. (See, e.g., Appeal of Manuel and Ofelia C. Cervantes, Cal. St. Bd. of Equal., Aug. 1, 1974; Appeal of Estate of James A. Craig, Deceased, and Viola F. Craig, Cal. St. Bd. of Equal., July 7, 1967.) In conformity with the interpretation given to comparable federal law, we have consistently held that the statute of limitations set forth in section 19053 must be strictly construed and that a taxpayer's failure, for whatever reason, to file a claim for refund within the statutory period bars him from doing so at a later date. There is no reason to reach a different conclusion in the instant appeal.

